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FILED

FEB 24 2006

RICHARD W. WEINER,
CLERK OF COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINCENT E. KEATES,

No. C 05-3959 CW

Petitioner,

v.

CERTIFICATE OF
APPEALABILITY

JEANNE S. WOODFORD, California
Department of Corrections,

Respondent.

/

Petitioner Vincent E. Keates filed a petition for writ of habeas corpus on September 29, 2005. Respondent Jeanne S. Woodford moved to dismiss the habeas petition as untimely. On December 13, 2005, the Court granted Respondent's motion to dismiss. Petitioner's petition was dismissed with leave to amend. Petitioner was granted two months from the date of the order to file a new petition, explaining when and how he discovered that he would receive only fifteen percent, and not fifty percent, worktime credit for the time he served in prison and showing that extraordinary circumstances beyond Petitioner's control existed.

1 which made it impossible to file the petition on time, and
2 warranted equitable tolling. Petitioner did not file an amended
3 petition, indicating that he wishes to stand on his claim as plead.

4 On January 25, 2006, Petitioner filed a notice of appeal. A
5 habeas petitioner may not appeal a final order in a federal habeas
6 proceeding without first obtaining a certificate of appealability
7 (formerly known as a "certificate of probable cause to appeal").
8 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
9 appealability should be granted "only if the applicant has made a
10 substantial showing of the denial of a constitutional right." 28
11 U.S.C. § 2253(c)(2).

12 The Court certifies in accordance with Title 28 U.S.C. section
13 2253 that the following issue involves a substantial showing of the
14 denial of a constitutional right: whether his September 29, 2005
15 federal habeas petition is untimely, thus precluding the Court from
16 addressing the merits of his petition. Accordingly, the Court
17 shall issue a certificate of appealability. The Clerk of Court
18 shall process the notice of appeal accordingly.

19 IT IS SO ORDERED.

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21 Dated: FEB 24 2006


CLAUDIA WILKEN
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Keates,

Case Number: CV05-03959 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

Woodford et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 24, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Daniel A. Horowitz
120 11th Street
Oakland, CA 94607

Juliet B. Haley
California Attorney General's Office
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-7004

Dated: February 24, 2006

Richard W. Wiking, Clerk
By: Sheilah Cahill, Deputy Clerk